HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Misc. Application No. 222 of 2001

Date of Decision : 20th March, 2006

~~A.F.R. (Approved for reporting)~~

Not approved for reporting.

Date Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 222 of 2001
(Old No. 4130 of 1999)

Ram Prakash Sharma
S/o Late Salig Ram,
Secretary, Northern Railway Consumer
Cooperative Society Limited,
Haridwar … Applicant

Versus

1. State of Uttaranchal

2. Special Judge (Anti Corruption)
U.P. (East) Dehradun

3. Superintendent of Police
CBI/SPE, Dehradun …
Respondents

Sri L.K. Tiwari, learned counsel for the applicant
Sri Amit Bhatt, learned A.G.A. for the respondent.

Hon'ble J.C.S. Rawat, J.

The present petition u/s 482 Cr.P.C. has been filed to quash the impugned order dated 08.09.1999 passed by the Special Judge (Anti Corruption) U.P. (East), Dehradun (Annexure-10 to the petition).

Brief facts for the disposal of this petition are that a complaint was filed before the CBI Magistrate, Dehradun u/s 168 I.P.C. and that was dismissed by the learned Magistrate vide its order dated 09.01.1999. It was further held that on 03.06.1998 at about 11:00 a.m., the Superintendent of Police, CBI/SPE, Dehradun received information that the accused Ram Prakash Sharma, Train Electric Fitter at Haridwar registered a case u/s 168/409 I.P.C. and 13(2) read with Section 13(1) (c) & (d) of the Prevention of Corruption Act, 1988 and the investigation was entrusted to Sri S.S. Atwal, Inspector of Police CBI/SPE Dehradun. While the investigation was pending, a complaint u/s 168 was filed by the CBI. The learned

Magistrate further held that the investigation is going on and a separate complaint is not maintainable and the investigating officer would file report u/s 173 and as such the said complaint was dismissed.

Feeling aggrieved by the said order, the present petition has been preferred.

I have learned counsel for the parties and perused the record.

Perusal of the complaint reveals that that the complaint filed by the CBI u/s 168 I.P.C. was dismissed by the court below as such the applicant may not have any grievance against that order. Whereas the second part of the prayer is concerned, the matter is under investigation and it has been held in **Mrinal Kant Malik Vs State of U.P., 1999(1) Allahabad Criminal Reports 106.** The observations are quoted below:

*"This question came before a **Division Bench of the Allahabad High Court in A.S. Bindra Vs Senior Superintendent of Police and others** Criminal Misc. Writ petition No. 1342 of 1997. The Division Bench had before it the decisions of the Supreme Court recorded after the decision of **Seven Judges Full Bench** in the case of Ram Lal Yadav by the Allahabad High Court. The Division Bench found that "in the cases of the Supreme Court which have been delivered after the judgment of the Full Bench in Ram Lal's case (supra), none of the Supreme Court cases considered the question whether jurisdiction of the High Court could be invoked under section 482 Cr.P.C. while a criminal case was still being investigated. The Supreme court was, therefore, not deciding this point in any of the subsequent judgments and any casual observation that either in the jurisdiction under Article 226 of the Constitution of India or under section 482 Cr.P.C. in a suitable case the High Court could grant relief was just an observation of the Supreme Court to indicate that the High Court could exercise its inherent power under section 482 Cr. P.C. or extra ordinary jurisdiction under Article 226 of the Constitution to interfere in a suitable matter pending investigation". The Division Bench*

further went to distinguish that the observation of the Supreme Court could only mean that the powers under section 482 Cr. P.C. could be exercised in some proceedings arising out of a complaint while the matter was pending in some court the jurisdiction under Article 226 of the Constitution could be exercised when the matter was still in investigation stage and had not reached the court, The Division Bench further found "The Supreme court, as a matter of fact, has quoted Ram Lal's judgment of the Full Bench of the Allahabad High Court in the case of Janta Dal Vs H.S.Chauhan, AIR 1993 SC 892(Paragraph 155 page 926). This paragraph in the aforesaid case has been quoted only to indicate that the similar view which the Supreme Court was taking had already been taken by the High Court in the said Full Bench. As such, case of Ram Lal has been given a seal of approval by the aforesaid judgment of the Supreme Court .

In view of what has been stated above it is felt that when the judgment in Ram Lal's case has been approved by the Supreme Court and when the Supreme Court had not overruled or differed from the decision in the case of ***Emperor Vs Khwaja Nizir Ahamad or kurukshetra*** ***University's case (supra),*** *a distinction could always be made between cases pending before a court and pending investigation and while a case pending before a court could be quashed in exercise of powers under section 482 Cr. P.C. the same may not be used to quash a matter pending investigation"*

This court has also followed the said decision that the investigation cannot be stayed under the proceedings u/s 482 Cr.P.C.

In view of the above discussion, I am of the view that the petition is not maintainable. The only remedy available to the petitioner is to file the writ petition before the appropriate court.

The petition is dismissed accordingly.

(J.C.S. RAWAT, J.)

20th March, 2006
Shiv